

P-1621, 1466/PA-93-1184 ORDER REQUIRING REFUND AND REFERRING MATTER TO
OFFICE OF ATTORNEY GENERAL

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

Don Storm
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Chair
Commissioner
Commissioner
Commissioner
Commissioner

In the Matter of a Request by Kantel
Communications, Inc. for Authority to Transfer
Assets to Peoples Telephone Company, Inc.

ISSUE DATE: August 15, 1994

DOCKET NO. P-1621, 1466/PA-93-1184

ORDER REQUIRING REFUND AND
REFERRING MATTER TO OFFICE OF
ATTORNEY GENERAL

PROCEDURAL HISTORY

On July 9, 1992, the Commission issued its ORDER SETTING REGULATORY REQUIREMENTS FOR STORE AND FORWARD AND INMATE-ONLY SERVICE PROVIDERS in Docket No. P-999/CI-91-22¹ (the store and forward docket). In that docket the Commission set rate caps and requirements for providers of pay telephone service who use store and forward technology. The requirements extended to providers of "inmate-only" store and forward service in correctional facilities.

On July 19, 1993, the Commission issued its ORDER AFTER RECONSIDERATION in the store and forward docket. At pp. 3-4 of that Order the Commission stated:

The Commission addressed the store and forward authority issue in the July 9, 1992, Order, stating definitively for the first time that certification beyond payphone authority was necessary to provide store and forward service. The Commission therefore concludes that it would be unreasonable to assess refunds against inmate providers who may have charged store and forward rates in excess of their payphone authority prior to the July 9 Order.

The Commission notes that this finding does not extend to inmate providers who charged rates in excess of their tariffs after the July 9 Order. These providers would have been on notice that store and forward certification is necessary to provide inmate facility service, and that they must charge rates which are consistent with such authority.

While the Commission will not at this time initiate a refund process against inmate payphone providers who exceeded their tariffs after July 9, 1992, or inmate facility providers who provided service without payphone authority, the Commission is not saying that refunds in such cases should be precluded. Requests for refunds, if any, can be handled on a case by case basis.

On November 29, 1993, Kantel Communications, Inc. (Kantel or the Company) and Peoples

¹ In the Matter of a Commission Investigation into the Use of "Store and Forward" Technology in Telephone Equipment Operated in Minnesota.

Telephone Company, Inc. (Peoples) filed a joint request in the above-captioned docket for Commission approval of Kantel's sale and transfer of assets to Peoples.² At the time of the transfer, Kantel was an inmate-only store and forward service provider.

While investigating the transfer of assets, the Department of Public Service (the Department) discovered that Kantel had been charging excessive rates for inmate-only service.

In an Order dated February 25, 1994, the Commission required Kantel to submit an affidavit of billing records for the period of July, 1992, (when the Commission's Order put Kantel on notice of store and forward requirements) through January, 1993 (when Kantel was sold to Peoples). The affidavit was necessary to assist the Department in its investigation of overcharges.

On May 24, 1994, the Department submitted its report and recommendations. The Department concluded from Kantel's affidavit that Kantel had charged customers excessive rates totaling \$16,600 for the period of July, 1992, through January, 1993. The overcharge amount was based on a comparison of Kantel's tariff rate of \$1.90 per local collect call and the rate of \$1.45 for an operator-assisted local call authorized in the July 9, 1992 Order. The excess amount was multiplied by the 36,889 local collect calls placed by Kantel from July, 1992, through January, 1993.

The Department recommended that the Commission require Kantel to refund the \$16,600 to inmate recreational funds in the correctional facilities where the calls originated. The Department explained that individual customer billing records are not available, so direct refunds to customers would not be possible.

On July 27, 1994, Kantel filed reply comments.

The Department filed a response on August 1, 1994.

The matter came before the Commission on August 9, 1994.

² The actual transfer of assets took place in February, 1993.

FINDINGS AND CONCLUSIONS

I. Comments of the Parties

A. Kantel

Kantel argued that a refund is not warranted because it did not believe it was violating a Commission Order and because no claims for refund were made during the subject period. Should the Commission require a refund, Kantel asked that the refund not include calls made from July 1 through July 9, 1992, when store and forward requirements were established in the Commission's Order. Kantel also believed that the refund should be adjusted by 6% to reflect the Company's usual rate of uncollectibles. Kantel argued that the refund should be reduced by expenses related to the service, such as federal and state income taxes. Kantel stated that any refund should be calculated by comparing actual charges to the highest authorized charge for a similar call from a local exchange company (\$1.50 for United Telephone Company).

Kantel argued that it should not be penalized for overcharges because it believed the July 9, 1992, Order was in abeyance until the reconsideration petition filed by the Residential Utilities Division of the Office of the Attorney General (RUD-OAG) was heard by the Commission on June 29, 1993. According to Kantel, it did not "knowingly and intentionally" violate a statute or Commission rule or Order, and should therefore not be considered for a penalty.

B. The Department

The Department stated that Kantel should be required to refund the \$16,600 in excess revenue the Company collected in the subject period. The Department recommended that the refund be calculated using the rates charged by US WEST, the local exchange carrier for 15 of the Company's 20 payphone locations. The Department calculated a refund reduction for the July 1 through July 9, 1992, period, should the Commission eliminate this period from the refund calculation. The Department stated that Kantel had not supplied evidence to support its actual bad debt loss, so a refund reduction for bad debts should not be applied.

The Department stated that the Commission has the authority under Minn. Stat. § 237.461 to refer Kantel's overcharges to the Attorney General's office for civil penalty proceedings. According to the Department, the Company could be found to have knowingly and intentionally violated the Commission's Order by not reducing its rates after the issuance of the July 9, 1992 Order. The Commission's July 9 Order specifically stated that it was effective immediately, and Kantel did not seek or obtain a stay of the Order.

Although the Department believed that referral for penalty proceedings was within the Commission's discretion, the Department did not recommend such action.

II. Commission Action

A. The Refund

The Commission finds that Kantel must refund the \$16,600 it overcharged customers during the period of July, 1992, through January, 1993. This amount was clearly in excess of the rate cap imposed in the Commission's July 9, 1992, Order. The Company was not authorized to collect these funds and should therefore promptly refund the excess revenues.

The Commission does not agree with Kantel that the refund amount should be reduced by corresponding expenses during the refund period. Nor does the Commission agree that the refund should be reduced by an estimated percentage of bad debts. These proposed deductions are not supported by documented evidence. Calculating the refund at gross excess revenues is a straightforward approach based on Kantel's own documented billing evidence. It is also consistent with the Commission's past calculations of refunds.

The Commission agrees with the Department that the refund should be calculated by comparing Kantel's actual charges to the charges authorized for similar services by US WEST, the local carrier in most of the Company's locations. Capping Kantel's rate at US WEST's rate for station-to-station collect calls (\$1.45) is consistent with the Commission's July 9, 1992, and July 19, 1993, store and forward Orders.

Assigning the refund amount to the proper parties is problematic because specific billing data is not available. The Commission notes, however, that the RUD-OAG, the Department, and the Commission may have received complaints from overcharged consumers during the relevant period. The Commission will therefore require the Company to refund the amounts specified in consumer complaints for this period. When these refunds have been allocated, the Company should distribute the balance of the refund amount, on a proportional basis, to the inmate facilities where the calls were placed. Because of the lack of information regarding the specific calls from these institutions, the Commission in this case will accept the Department's recommendation to direct the refunds to the institutions' inmate recreational funds.

B. Referral to the Office of the Attorney General

The Commission also finds that this matter should be referred to the Office of the Attorney General for civil penalty proceedings under Minn. Stat. § 237.461. The facts warrant referral for enforcement proceedings because the Company knowingly and intentionally violated the Commission's July 9, 1992, Order by continuing to charge excessive rates after rates and requirements were set.

The July 9, 1992, Order clearly and specifically set a rate cap for Kantel and other service providers. Although Kantel's rates were in excess of the Commission's authorized rates, Kantel chose not to reduce its rates to conform to the Commission's Order. As a result, customers were charged excessive, unauthorized rates for approximately seven months.

The Commission's July 9, 1992, Order stated that the Order "shall become effective immediately." Order at p. 14. Although the RUD-OAG petitioned for reconsideration of the Order, the petition did not prevent the Order from going into effect. Governing statutes and rules do not provide for any automatic stay or abeyance of an Order pending resolution of a reconsideration petition. Minn. Stat. Chapter 237. Neither did Kantel take the affirmative step of requesting or obtaining a stay of the July 9, 1992, Order. Minn. Rules, part 7829.3000, subpart 6. Absent an automatic stay through statute or rule, or a stay following request of a party, the Commission's July 9, 1992, Order was in force and effect from the date of its issuance. In this set of circumstances, the Company should have been aware of this fact and should have

reduced its rates to comply with the July 9 Order. Failing to do so was a knowing and intentional violation of the Commission Order.

The Commission will refer this matter to the Office of Attorney General for enforcement proceedings pursuant to Minn. Stat. § 237.461. The Commission requests the Attorney General's office to investigate this matter as expeditiously as possible.

ORDER

1. Kantel shall refund the overcharges of \$16,600 as directed by Commission Staff to any parties who filed complaints with the Commission, the Department, or the Office of the Attorney General during the period of overcharge, from July, 1992, through January, 1993. After these refunds are made, any remaining refund amount shall be distributed on a proportional basis to the correctional facilities where the calls originated. The refunds shall be applied to the institutions' inmate recreational funds.
2. Within 60 days of the date of this Order, Kantel shall submit a report indicating the number of overcharged calls made from each correctional facility and the amount of refund made to each complainant and correctional facility.
3. This matter is referred to the Office of the Attorney General for enforcement proceedings pursuant to Minn. Stat. § 237.461.
4. This Order shall become effective immediately.

BY ORDER OF THE COMMISSION

Burl W. Haar
Executive Secretary

(S E A L)